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ABSTRACT

Focusing on current United States Supreme Court decisions affecting the searching of students in school, this report also briefly examines the evolution of the right to education and student freedom of speech. Regarding search and seizure, since 1985 the Court has maintained that school officials are not exempt from the restrictions of the Fourth Amendment. While the Court argued that students have a right to expect privacy in the school, it also recognized that school officials have the responsibility to insure a safe school environment. School officials do not need to have a search warrant prior to searching a student, but may conduct a search on the basis of reasonable suspicion. This is a lower standard than probable cause, necessary for police searches. Confusion arises when school searches may result in not only school punishment, but also criminal prosecution. When school officials believe criminal proceedings may follow a planned search, the higher standard of probable cause must be applied. An appendix containing tips on conducting a search is included. (Contains 14 references.) (LH)

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ED 402 210

# SEARCH AND SEIZURE:
## STUDENTS RIGHTS VS. THE SCHOOL

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## Education as a Necessity of Life

> "The most notable distinction between living and inanimate things is that the former maintain themselves by renewal" (Dewey, 1916)

In today's society, the most important action that we as educators, parents, and students can take to insure that our society will remain a democracy is to renew life with the ideals that we believe in. To do so means that we must also practice what we preach in a democratic society. Education, in the area of passing on ideas of our society, is the means of this social continuity of life and schools are one of the important methods of this transfer.

As John Dewey wrote, "Our chief business with them (students) is to enable them to share in a common life." Our schools must also reflect this idea in the way that we administer the day to day operations of the school.

## Education as a Right

Has education always been considered a right of the student? The answer is no. Before the 1960's it was felt that students who enrolled in secondary schools were thought to be turned over to the school authorities by their parents and in fact became wards of the state.(Armstrong, 1983) As school attendance became mandatory the nature of secondary education came to look at the relationship between students and schools.

In 1960, the court ruled that, "tax-supported education had become so fundamental that it could not longer be regarded as a privilege; rather,

as a right. And as a right, such an education could not be denied to a student unless due-process-of-law provisions were followed." (Dixon case [186 F. Supp. 945 (1960)])

Because of this ruling students were provided legal protections afforded them under the Fourteenth Amendment of the Constitution of the United States.

## Students Rights

With the Supreme Court decision in the Dixon case, it soon became clear that the rights of students were not, as we shall see, to be left at the school gates.

Many other rights guaranteed under the Constitution avail themselves to students, some include:

1) Speech - In 1969 the Supreme Court ruled in the Tinker v. Des Moines Independent Community School District case that,

> "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights of freedom of speech or expression at the schoolhouse gate." (Starr, 1978)

2) Press - If it is demonstrated that school authorities have suppressed a publication without just cause, then they have interfered illegally with free speech and freedom of expression. In the 1973 Papish v. University of Missouri Board of Curators case, the court ruled that school officials' beliefs something may be obscene is not grounds for suppressing publication. (Armstrong, Savage 1983)

## Search and Seizure

With all the rights of students that have or will come before the Supreme Court, one that will be revisited over and over will be the rights of a student concerning search and seizure.

Two Amendments that apply to this area are:

The Fourth Amendment which states,

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause ..." (U.S. Constitution, Amend. IV) and

The Fourteenth Amendment,

> "... No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law..." (U.S. Constitution, Amend. XIV).

These Amendments will become the backbone for the legal debate involved in search and seizure. In discussing search and seizure we will review four areas dealing with: 1) School Administrators, 2) Police Officers, 3) School District Security Officers, and 4) Search and Seizure Recommendations.

### School Administrators

For many years, school administrators relied upon common law practices in dealing with the students entrusted to their care. This legal doctrine of *in loco parentis* means "in place of the parent," and it allowed school personnel to act with the authority of a parent in supervising the students. (Kemerer, 1994) For many years this action was upheld by the courts; however, in 1985 the world of the administrator was turn upside down. In 1985 the US Supreme Court

made its ruling in the case of New Jersey v. T.L.O. and since that time the administrator's ability to use *in loco parentis* has been done away with.

This case centers upon search and seizure in dealing with T.L.O. and her actions at Piscataway High School in Middlesex County. T.L.O. was found in the girls rest room smoking and her purse was later searched, which contained rolling papers and marijuana. All the evidence was turned over to the local police and she was arrested. T.L.O. felt that the evidence could not be used because of her 4th Amendment rights, but the US Supreme Court held that the evidence seized could be admitted. This was good news for the school officials; however, there was a price to pay. The court ruled that school officials are not exempt from the restrictions of the 4th Amendment and that they are not simply stand-ins for the parents but are officials of the state. They went on to state that students have a right to expect privacy in the school.

But what about the school's responsibility to the public to insure a safe school environment? The court wrote, "School officials need not obtain a warrant before searching a student who is under their authority. The school setting also requires some modification of the level of suspicion of illicit activity needed to justify a search." (McClenaghan, 1987) The court held that school officials need to have reasonable suspicion in order for the search to be legal under the 4th Amendment and established a two part test - 1) it must be determined whether the action was justified at its inception and 2) whether the

search was conducted reasonably under the circumstances which justified the interference in the first place. This two part test has become a major focus for both the schools and police departments around the country.

Since 1985, the courts have helped define other search and seizure situations that have arisen. Student consent searches, metal detectors, locker searches, automobile searches, use of cameras, drug dogs, and urinalysis testing have all been talked about in the courts.

Problems arise, between the school and police departments, because of the lowered legal requirements for search and seizures. In order to do away with the concept of the silver platter doctrine of the 1940's, there have been many court cases involving and defining the role between school and police officers concerning search and seizure.

**Police Officers**

Throughout the history of the United States, we have put the police officer into the role of sworn peace officer and have set boundaries on their actions against the innocent and guilty. The Fourth Amendment clearly states that, "The right of the people ... shall not be violated ... but upon probable cause." What is probable cause and how does it apply to sworn peace officers in school settings? In the case of State v. Jones, probable cause is defined as " the existence of circumstances which would lead a reasonably prudent man to believe in guilt of arrested party; mere suspicion or belief, unsupported by facts or circumstances, is insufficient."

Cases that have been decided by the courts have based their opinions on this major question, "Who started the search and how involved were the police?" In other words, what procedure must be followed when the search is instigated by the police and when administrators instigate the search.

First, in Walters v. United States, when the search is on the behest of the police officer, the reasonableness of a search conducted on school property by police assigned by the police department must be tested by the standard of probable cause.

Secondly, it has been ruled that when an assigned school liaison officer merely acting in conjunction with school officials in conducting a student search, probable cause does not apply. (Cason v. Cook, 810 F.2d 188 (8th Cir. 1987)) The major responsibility rested upon the administrator and the T.L.O. test. This ruling on the reasonable suspicion standard has been reaffirmed when the Texas Appellate Court ruled "when school officials conduct the search in question in conjunction with, but not at the behest of, police officers assigned to the school, the reasonable suspicion standard applies." (Coronado v. State, 806 S.W.2d 302 (Tex. App. 1991))

In summary, if a school district conducts a search based upon reasonable cause and the police are later notified for prosecution, the search is generally upheld under New Jersey v. T.L.O. However, if the school search is at the request of the police, the search is struck down

unless the search meets the constitutional standard required of police searches (probably cause). (Aldridge, 1990)

These cases have helped define the boundary lines of search and seizure on students; however, in Texas there is a new line being drawn that creates a large gray area for administrators and police departments alike.

**School District Security Officers**

Under the Texas Education Code (TEC)§ 21.483 and TEC§ 21.483 (Appendix 1) school districts are now authorized to employ their own campus security officers with all the power, privilege, and immunities of peace officers. How will these officers function under New Jersey v. T.L.O.? What legal requirements will they following concerning search and seizure? These gray areas will not doubt be settled by the courts; however, there are possible avenues that districts can use to protect themselves.

According to the Institute of Criminal Justice at Southwest Texas State,

> "when a school district employs a law enforcement officer at their campus or the district has its own certified officers, it is the opinion that a certified officer, even though they are school employees, must establish probably cause to conduct a search." (D. Tiller, personal communication, April 23, 1995)

This opinion is based upon the fact that school districts will hire "certified officers", and if districts will, then this is very important advice to follow. This action has been ruled upon by the courts which said, "when the search is conducted by a school security guard who

serves no educational function and searches without direction of school authorities, the search must be premised upon probably cause." (People v. Browers, 356 N.Y.S.2d 432 (1974))

The gray area could end here; however, we need to return to the contents of the 14th Amendment and study its impact upon search and seizure in the school. The 14th Amendment basically states that no state shall deprive any person of life, liberty, or property, without due process of law. Education has been described as a due-process property right of the student.

A more logical policy in dealing with school district security officers should be based upon what property right will the student loose and the due process involved. The higher property right lost, the higher the higher the test should be. If the student will loose their right to an education, by being expelled or suspended from school, then the security officer should use the reasonable suspicion standard.

As an administrator you must weigh the property right of the student against the level of search. If the student may loose, not only their education property right but also their freedom by criminal actions being filed, then the higher standard of probable cause needs to be adhered to. By following this idea, the administrator will save themselves from possible prosecution by basing their decisions upon due process and the spirit of the law.

**Search and Seizure Recommendations**

To make sure that searches and seizures are conducted in a manner that would be acceptable under the law and reflect our democratic ideals, first make sure that you understand which test you will be held accountable for (reasonable suspicion v. probably cause). Second, determine what level of due process should be followed and if a search is conducted, a list of "Tips For Conducting a Successful Search" are listed under Appendix 2 that will help the administrator conduct a logical search.

One other area to be aware of is consent searches. In Jones v. Laxtexo ISD, Judge William Wayne Justice ruled that, "students are accustomed to receiving orders and obeying instructions from school officials ... and that consent was given in a coercive atmosphere." It is with good advice that both police and school officials not conduct a search based on a student's consent only. (D. Tiller, personal communication, April 23, 1995)

## Conclusion

The area of search and seizure can be one of the most difficult to follow and define, depending upon the situation. This is one area that both the schools and police departments must fully understand in order to protect the rights of the students while on school property. If this understanding is not achieved, both the police department and school district can be held liable for the misuse of power and the loose of the students property right.

As stated in the beginning, "Our chief business with them (students) is to enable them to share in a common life." If we do not practice what we preach, when it comes to the rights of our students, then these future citizens will not be able to maintain themselves and our society by renewal.

APPENDIX 1

TEC§ 21.308(a) The governing board of any school district may employ security personnel for use in any school within its district when the board in its discretion determines that the personnel are necessary. If the governing board authorizes the security personnel to carry a weapon, the security personnel must be commissioned peace officers.

TEC§ 21.483
(b) In a peace officer's jurisdiction, a peace officer commissioned under this section:

(1) has the powers, privileges, and immunities of peace officers;
(2) may enforce all laws, including municipal ordinances, county ordinances, and state laws; and
(3) may, in accordance with Chapter 52, Family Code, take a juvenile into custody.

(d) A school district peace officer shall perform administrative and law enforcement duties for the school district as determined by the board of trustees of the school district. These duties must include protecting:

(1) the safety and welfare of any person in the jurisdiction of the peace officer; and
(2) the property, real and personal, of the school district.

APPENDIX 2

## Tips For Conducting a Successful Search

### General

1. Always have an adult present from the inception of the search until the "evidence" is properly secured.
2. Searches should be conducted and witnessed by members of the same sex.
3. Searches should be conducted in such a way as to cause the least amount of embarrassment to the student.
4. Whenever a search is to take place, the student should be escorted from class to where the search is to take place. Stops along the way should be avoided. All personal property should be brought by the student from the classroom to where the search is to be conducted.

### Search of a Student

1. Student searches should be conducted in a private area where there will not be interruptions.
2. Have student remove all outer clothing such as a coat, sweater, hat and shoes. Have student remove all objects from pockets. Lay these aside until student is searched.
3. Conduct the search from the side of the student body working from top to bottom on each side.
4. Check middle of back, inside forearms and things.
5. Instead of patting material, crush the cloth in articles of clothing.
6. Don't stop if contraband is found. Continue until all objects have been investigated.
7. Turn attention to items that had been set aside. Items that could conceal contraband should be taken apart.
8. Remember that the scope of the search must be reasonably related to the circumstances which justified the search.

### Chain of Custody

1. An individual should be designated in each school to be in charge of possible contraband.
2. Contraband should be placed inside an envelop and sealed with the date, official's name, and circumstances behind the seizure.
3. Seized evidence should be secured in a locked desk, cabinet or vault.
4. Evidence should be turned over to hearing officer or police as soon as possible.

(Aldridge, 1990)

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